



1        On December 18, 2013, Defendant Alphatec Spine, Inc. requested  
2 a hearing date for a motion to compel Plaintiff to supplement  
3 certain interrogatory responses. (See Jt. Mot. Leave File 2, ECF  
4 No. 58.) Plaintiff Abdou served responses and objections to  
5 Defendant's first and second sets of interrogatories on May 28 and  
6 June 17, 2013. (Id.) Defendant Alphatec served its responses and  
7 objections to Plaintiff's first set of interrogatories on June 25,  
8 2013. (Id.) Because the motion sought to address interrogatories  
9 objected to in May and June, Defendant was advised that it would  
10 need to obtain relief from the thirty-day time limit contained in  
11 the Case Management Conference Order. (See id.)

12        On January 7, 2014, Plaintiff Samy Abdou, M.D., and Defendant  
13 Alphatec Spine, Inc., filed a Joint Motion for Leave to File  
14 Motions to Compel Regarding Discovery Disputes [ECF No. 58]. The  
15 Joint Motion states that "the parties have reached an agreement to  
16 supplement their interrogatory responses by January 24, 2014."  
17 (Id. at 3.) In the event that they are dissatisfied with the  
18 supplemental responses, Plaintiff and Defendant seek leave to file  
19 a motion to compel by February 24, 2014, which is thirty days from  
20 the date set for their supplemental responses.

21        More than six months ago, the underlying interrogatories were  
22 objected to by the responding party -- on May 13, June 17, and June  
23 25, 2013. (Id. at 2.) The Plaintiff and Defendant do not maintain  
24 that they were attempting to resolve their disputes during this  
25 multi-month period. Neither party contacted the Court to extend  
26 the deadline for bringing motions to compel discovery. But on  
27 December 2, 2013, it became clear to Plaintiff and Defendant that  
28 they had reached an impasse. (See id.)

1       The parties have not accounted for the time between serving  
2 objections to interrogatories and filing their Joint Motion. The  
3 thirty-day periods for bringing their respective discovery disputes  
4 to the attention of the Court have long passed. The subsequent  
5 agreement to provide supplemental interrogatory answers was made  
6 without reference to the expired deadlines for bringing motions to  
7 compel. Without prior court approval, the parties cannot cure the  
8 passage of the deadlines by tying new deadlines for motions to  
9 compel to the service of Plaintiff's and Defendant's supplemental  
10 discovery responses. Supplemental responses do not reinstate  
11 lapsed deadlines.

12       In effect, Plaintiff and Defendant are seeking to modify the  
13 Case Management Conference Order to permit them to bring motions to  
14 compel long after discovery objections had been served. They  
15 maintain that they did not believe the disputes were "ripe" until  
16 an impasse was reached. (Id.) On other occasions, this Court has  
17 extended the thirty-day deadline for bringing a motion to compel  
18 while the parties attempted to resolve their discovery disputes.  
19 See Barcel USA, LLC v. Baja Distributors, Inc., Case No. 12-cv-  
20 1720-DMS-RBB (S.D. Cal. June 19, 2013) (granting extension of  
21 thirty-day period to bring a motion to compel discovery while  
22 counsel engaged in "meet and confer" sessions). A similar request  
23 was not made here. Alternatively, if the parties were uncertain as  
24 to the time for bringing a motion to compel, they could have sought  
25 clarification from the Court. That was not done.

26       The party seeking to modify deadlines bears the burden of  
27 showing that despite its diligence, the deadlines cannot reasonably  
28 be met. Johnson v. Mammoth Recreations, Inc., 95 F.2d 604, 609

1 (9th Cir. 1992). The Joint Motion for Leave to File Motions to  
2 Compel does not establish that counsel have worked diligently since  
3 May and June of 2013 to resolve their discovery disputes. If a  
4 party seeking to amend the scheduling order "was not diligent, the  
5 inquiry should end." Id. On this basis alone, the Joint Motion is  
6 **DENIED.**

7 Assuming the parties did not believe that the thirty-day  
8 period for bringing a motion to compel began to run until they  
9 reached an impasse, (see Joint Mot. Leave File Mots. Compel 2, ECF  
10 No. 58), their Joint Motion was not filed until January 7, 2014,  
11 thirty-five days after Abdou's December 2, 2013 letter. For this  
12 additional reason, the Joint Motion [ECF No. 58] is **DENIED.**

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14 DATED: January 29, 2014

  
Ruben B. Brooks  
United States Magistrate Judge

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16 cc: Judge Benitez  
17 All Parties of Record  
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